Considerations for Employers with Company Vehicles

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The Alberta Court of Appeal recently released its decision in *Mugford v. Weber*. This case is of significant concern for employers who have employees that drive company vehicles, either during work hours or on their own time.

Section 181(b) of the Alberta *Highway Traffic Act* makes an employer liable for the actions of its employees if those employees are (1) driving the employer's vehicle, (2) with the employer's consent, whether express or implied.

The facts in *Mugford* were that a seasonal employee, Weber, was given use of one of Kodiak's company trucks each time he started working for the season. During off-duty hours, Weber kept the truck at his house in Grand Prairie.

Each time Weber commenced employment with Kodiak, he signed a form agreeing to abide by Kodiak's policy prohibiting personal use of the vehicle. The policy stated, in part:

I agree to adhere at all times to the terms of the company policy governing the use thereof namely that the same is not to be used for personal use in any manner. Without restricting the generality of the foregoing I agree that the vehicle is only to be used to travel directly to and from work. In the event that I am found in breach of these terms, I covenant and agree to be personally responsible for all costs related thereto including any damages sustained to the said vehicle ...

On the night of the accident, Weber did not drive straight home from work. Instead, he went to his girlfriend's house for dinner, which included alcohol. After an argument with her, he drove to a co-worker's house where he had more to drink. He was driving home from the co-worker's house when he had the accident. He later pled guilty to the impaired driving charge that arose from the accident.

At trial, Weber's supervisor testified he would have reminded Weber of the policy, and also would have warned him against drinking and driving. It was accepted as a fact that Weber had breached the terms of the employment policy he had signed – he had been using the vehicle for a purpose other than travel to and from work.

The question at issue on appeal was this: when an employee has the employer's express consent to have possession of a company vehicle, but does not have express or implied consent to drive the vehicle at the time of the accident and is in breach of the conditions attached to the use of the vehicle, does section 181(b) of the *Highway Traffic Act* apply to make the employer vicariously liable for the employee's negligence? The Court of Appeal held that the answer to this question is yes.

The reason underlying the policy behind section 181(b) of the *Highway Traffic Act* was found to lie in a weighing of a vehicle owner's interests against those of the public who use the highways. The Alberta Legislature (and most other

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Legislatures across the country) has decided that it is preferable to give the public recourse against the owner of the vehicle, as the owner is more likely to have assets and insurance to satisfy a judgment. If an owner were permitted to hand over possession of a vehicle under the condition that the driver was not allowed to do anything negligent, the owner of the vehicle would be able to escape liability in every case, and the injured member of the public would in many cases be left holding an empty judgment against a driver without adequate or any insurance, and without significant assets.

Once an employer has consented to a person driving a company vehicle, it does not matter if the employer has placed limits on what that person may or may not do with the vehicle. So, if an employee has been given possession of a vehicle, and is in an accident, the employer will be responsible. It does not matter if the employee was drunk, off-duty, and in violation of the employer's policy that says employees cannot drive drunk, or cannot use the car for personal travel. If the employee is driving, and was given possession of the car, it will not aid the employer's defence to show it had placed restrictions on the use the employee might make of the car (i.e. personal vs. business use), or the manner in which the employee must drive the car (i.e. drive safely, don't drink and drive, etc.).

The Court of Appeal, anticipating companies would be concerned by its decision, and would ask how they were supposed to handle this new risk, said:

The legislation is intended for the benefit of users of highways and that benefit should not be circumvented by conditions imposed by owners by agreement or otherwise. The policy favours innocent third parties seeking compensation for injuries suffered at the hands of negligent automobile drivers. **The recourse for owners is to exercise more care when entrusting their vehicles to another and to obtain insurance in excess of the statutory minimum limits.** [emphasis added]

I think perhaps that advice could be expanded upon, and so have included some additional thoughts for consideration:

1. Notwithstanding the *Mugford* decision, it is still useful for an employer to have detailed employment policies governing the use of its vehicles. First, this will hopefully put the issue of safety in the employee's mind, and perhaps avoid some accidents. Second, it makes it abundantly clear that employees who transgress the policy will be subject to discipline, up to and including dismissal. That way, even though the employer might not be able to rely on the policy as a defence if there is an accident, it can use the policy to train and discipline employees.

2. Include a requirement in each employee's employment agreement to abide by the driving policy, and a positive obligation to disclose all driving infractions (excluding parking), whether personal or while on business, immediately after being ticketed and/or arrested.

3. Require driver's abstracts before an employee is given possession of a vehicle. After that, the employer should pull an abstract on each employee at least once a year, if not every six months.

4. Review your insurance policy. The statutory minimum coverage that an employer is required to carry is $200,000. I recommend that employers carry a minimum of $5 million, and would further recommend that, depending on the nature and size of the business, they strongly consider carrying $10 million of coverage. Although that might seem like a needlessly high amount, this firm recently dealt with a case where the injured parties' damages were greater than $10 million (the estimate of damages suffered by the people injured in the accident, and the wage loss claims from those killed in the accident, combined to exceed $12 million).

5. If it is possible to prevent employees from maintaining possession of company vehicles during off-duty hours, employers should give serious thought to that. It might be that you require employees to drive their own cars to and from work, and transfer to an employer vehicle during work hours.

6. Finally, employers might consider getting rid of company vehicles, and paying mileage instead, or requiring that employees lease cars in their own name, and then reimburse them for their monthly lease costs

In dealing with the issues raised in points two and three above, if the employer comes across a driver who does not have a clean record, I recommend that it either not hire that person, or, if the offence was committed after hiring, take fairly serious disciplinary action. If an employee is a safety risk, and has managed to get caught as a safety risk before anyone gets hurt (such as getting a dangerous driving ticket, or something like that), I would give serious thought to taking away the car, or firing the employee, even for a

first offence. When comparing the relative values of claims arising from an accident in cases where insurance may not be sufficient to cover the losses suffered, versus wrongful dismissal, I would much rather defend a wrongful dismissal action.

Further, if pulling a driver's abstract revealed an offence that had not been voluntarily disclosed, I would recommend that employee either not be hired, or be fired immediately, for cause. Of course, to do this, it helps if an employer has in place appropriate employment policies.

The employer in this case has filed an application for leave to appeal to the Supreme Court of Canada. In the meantime, the Alberta Court of Appeal's decision in *Mugford* is the law in Alberta. Watch for an update in this space regarding whether the Supreme Court agrees to hear the appeal and, if so, the results.